IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1999 OF 2004

Shri.Ismail Munim Siddiqui]
Age 44 yrs. Occ: Service]
residing at 72/2,]
Vitthal Nagar, Narpoli,]
Taluka Bhiwandi, Dist.Thane]..Petitioner

Vs.

1. The State of Maharashtra]
(Copy to be served upon]
the A.P.P.High Court,]
Mumbai)]
2. Commissioner of Police]
Thane Commissionerate]
Thane]
3. Dy.Commissioner of]
Police, Zone-I,]
Bhiwandi, Dist.Thane]
4. Sr.Inspector of Police,]
Bhoiwada Police Station]
Bhiwandi Dist.Thane]
5. Shri.S.M.Ahire,]
Police Sub-Inspector,]
Bhoiwada, Police Station]
Bhiwandi,Dist.Thane.]..Respondents

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Mr.Ajit Ram Pitale, Advocate for Petitioner
Mrs.A.S.Pai,A.P.P. for Respondents

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CORAM: D.G.DESHPANDE AND
SMT.V.K.TAHILRAMANI,JJ.

DATE : MARCH 7, 2006

ORAL ORDER:

1. Heard the learned advocate for the petitioner and

learned A.P.P. for Respondents.

2. The petition is filed mainly against Respondent no.5 who was at the relevant time Police Sub-Inspector. By this petition, the petitioner seeks direction against Respondent No.5 to restore the possession of movable and immovable property from whom it has been taken. It is the case of the petitioner that one Abdul Kalam Muhammed Hasan Khan has died. The petitioner was his neighbour and was also having a Will duly executed by the said Abdul Kalam Muhammed Hasan Khan. The ornaments left by the said deceased, were handed over to the petitioner by another neighbour for safe custody. But Respondent no.5, one fine morning, called the petitioner and all those ornaments were handed over to a person who was claiming to be brother of the deceased. Therefore, this petition.

3. We found from the file of the State that what respondent no.5 has done, has been supported by station diary entries. He has taken all the care and caution to verify the antecedents of the said brother and respondent no.5 has sought orders from his superiors before handing over those ornaments to the

brother of the deceased.

4. The question which has been posed by the counsel for the petitioner is whether the police officer can exercise powers in this manner and dispose of the property. The answer in the circumstances of the case, is that the police officer has done whatever found to be necessary in the circumstances and the relative of the deceased who claimed to be brother of the deceased, has satisfied the respondent no.5 that he was real brother of the deceased and was entitled to the ornaments. Therefore, the police officer was perfectly justified in dealing with the property. There is no attempt by the respondent no.5 to suppress anything. He has maintained all the records of actions done by him. He has sought orders from the superiors and also conducted the enquiry in respect of the antecedents of the brother of the deceased.

5. Counsel for the petitioner states that he has filed suit against respondent no.5 only and order of status-quo is granted. The order of status quo will have the effect as to the situation prevailing on the date of the order. If the station diary entry

clearly gives the name of the person to whom the ornaments are given, the petitioner can join them as defendants by introducing necessary amendment. So far as the Will is concerned, it is clear from the Will, copy of which is annexed at Exhibit-A to the petition, there is no mention in respect of ornaments therein. Therefore, if the petitioner claims that he is legally entitled to those ornaments, the only thing which is open to him, is to file a civil suit because station diary entries reflect the names of the persons to whom the ornaments are given and those persons can be joined as party-defendants and rights to the said ornaments can be decided in the said suit. Therefore, no interference is called for. Hence, petition is dismissed. Rule is discharged.

[D.G.DESHPANDE, J.]

[SMT.V.K.TAHILRAMANI,J.]